

FOSTER v. EXXON MOBIL CORPORATION

RUSSELL FOSTER

February 28, 2006

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF OKLAHOMA
3 (1) RUSSELL FOSTER and)
4 (2) LOIS FOSTER, husband and wife,)
5 Plaintiffs,)
6 vs.) No. 05-1228
7 (1) EXXON MOBIL CORPORATION, a)
8 New Jersey corporation, and)
9 (2) DUKE ENERGY FIELD SERVICES,)
L.P., a Delaware limited)
partnership,)
Defendants.)

VIDEOTAPED DEPOSITION OF RUSSELL ELLIS FOSTER
TAKEN ON BEHALF OF THE PLAINTIFFS
ON FEBRUARY 28, 2006, BEGINNING AT 1:46 P.M.
IN CHICKASHA, OKLAHOMA

APPEARANCES:

MR. WES JOHNSTON, Attorney at Law, Johnston & Associates, 118 North Fourth Street, Chickasha, Oklahoma 73023, appearing on behalf of the PLAINTIFFS.

MR. STEVEN J. ADAMS, Attorney at Law, Fellers,
Snider, Blankenship, Bailey & Tippens, 321 South Boston, Suite
800, Tulsa, Oklahoma 74103-3318, appearing on behalf of the
DEFENDANT EXXON MOBIL CORPORATION.

MS. JAYNE JARNIGAN ROBERTSON, Attorney at Law,
Jayne Jarnigan Robertson, P.C., 119 North Robinson, Suite 825,
Oklahoma City, Oklahoma 73102, appearing on behalf of the
DEFENDANT DUKE ENERGY FIELD SERVICES, L.P.

THE VIDEOGRAPHER: TAMMY WARREN

25 REPORTED BY: JANNA WALKER, CSR

Page 14

1 A That's correct.

2 Q Okay. Now, you understand we're here
3 because of a lawsuit?

4 A Yes, sir.

5 Q All right. And the lawsuit concerns land
6 that you and your wife own?

7 A Yes, sir.

8 Q All right. If you would, tell-- tell the
9 ladies and gentlemen of the jury briefly about the
10 -- the land that's the subject of this lawsuit.

11 A We have 312 acres that we used for calf--
12 cow/calf operation, and raise wheat, pasture
13 cattle in the wintertime.

14 Q Where is the land located?

15 A Part -- a parcel of it's in Section 5, 4, 6,
16 and the other parcel is in 32, 5, 6.

17 Q And that's in Grady County?

18 A Correct.

19 Q All right. And you're telling us that's ag-
20 -- you use it as agricultural land -- you and your
21 wife do?

22 A Yes, sir.

23 Q All right. Do you actually -- you and
24 your wife -- reside on this property?

25 A Yes, sir.

Page 15

1 Q Do you have a name for this particular
2 tract of land we're talking about in this case?

3 A Well, we just call it our home place.

4 Q Okay. Now, how long have you resided at
5 or near this home place that we're--

6 A Since 1972.

7 Q Okay. And have you raised your family
8 there?

9 A Yes, sir.

10 Q Kids?

11 A Yes, sir.

12 Q Grandkids?

13 A Yes, sir.

14 Q Okay. You had mentioned that -- that
15 part of what you do there or have done in the past
16 is raise wheat and cattle?

17 A Yes, sir.

18 Q Tell us a little bit about your wheat and
19 cattle work there.

20 A Well, we have cows, and hold the calves
21 over and graze the wheat with it -- with the
22 calves, and sell them in the spring.

23 Of course, we hunt and fish on the land.

24 Q Do you do that with your kids?

25 A Use it for recreational purposes, yes, sir.

Page 21

1 Q Okay. And do you know when that
2 compressor station was originally built?

3 A Sometime in the early '80s, or late '70s
4 maybe.

5 Q Did you personally observe that?

6 A Yes, sir.

7 Q And who built it?

8 A I'm not-- or Mobil built it. They were the
9 operators and owners of it.

10 Q All right. Does Mobil or Exxon Mobil own
11 that Hughes compressor station anymore?

12 A I think Duke owns the compressor station
13 now.

14 Q When you say "Duke," are you talking
15 about Duke Energy?

16 A Duke Energy.

17 Q They're a defendant in this lawsuit?

18 A Yes, sir.

19 Q All right. Let me direct your attention to
20 sometime around early 2003.

21 Are you with me?

22 A Okay.

23 Q At that time did someone approach you to
24 talk about your property and the Hughes
25 compressor station?

Page 22

1 A Yes, sir.

2 Q And who was that?

3 A Mr. Michael Sias.

4 Q And did Mr. Michael Sias -- did he tell
5 you what his job was?

6 A He didn't really tell me what his job was.

7 He --

8 Q Did he tell you who he was working for?

9 A He told me he was working for Exxon
10 Mobil -- or yes, sir, for Exxon Mobil.

11 Q Okay. And what occasioned his call to
12 you?

13 A He wanted to send me an access
14 agreement to let them get out on our property and
15 dig some test wells.

16 Q Did he tell you why they wanted to do
17 that?

18 A He said they had had a spill around the
19 glycol unit and had sent a bug down after
20 whatever the spill was and had lost the bug

21 Q Okay. Did he tell you anything about
22 pollution at that time?

23 A No, sir.

24 Q All right. Well, when he told you that,
25 what did you tell-- what did you say?

Page 30

1 A No, sir.

2 Q Now, on Paragraph 3 of this document,
3 there's a reference to "landowner hereby settles
4 and releases Mobil and others."

5 Do you see that?

6 A Yes, sir.

7 Q Did that appear to you to be a legal
8 matter?

9 A Yes, sir.

10 Q And I think you had alluded to it earlier,
11 but what did you do after you had reviewed this?

12 A After we reviewed that, I seeked legal
13 counsel.

14 Q When you did that, did you come to our
15 office, Johnston and Associates?

16 A Yes, sir.

17 Q Okay. To visit with me and my dad?

18 A Yes, sir.

19 Q All right. Now, I want to move forward a
20 little bit in the process and-- well, before I do
21 that.

22 In all your discussions with Mr. Sias and
23 Mr. Wooten, did any of them tell you anything
24 about pollution on your property?

25 A Never mentioned pollution.

Page 31

1 Q Okay. Did you know of any pollution on
2 your property at that time?

3 A No, sir.

4 Q Okay. Now, you understand that later on,
5 Mr. Jerry Black-- you know who Jerry Black is?

6 A Yes, sir.

7 Q -- drilled a monitoring well which was on
8 your property, near the corner of the Hughes
9 compressor station?

10 A Yes, sir.

11 MR. ADAMS: Need to object to leading
12 witness.

13 MR. JOHNSTON: Okay. Let me rephrase
14 that.

15 Q (BY MR. JOHNSTON) Do you know who
16 Jerry Black is?

17 A Yes, sir.

18 Q Okay. Do you know whether or not he
19 drilled a well on your property?

20 A I was present when he drilled the well.

21 Q Okay. Where is that well located?

22 A At the corner -- just at the corner of the
23 plant property.

24 Q All right. Have you ever been there when
25 Jerry Black collected a water sample out of that?

Page 32

1 A Yes, sir.

2 Q Can you tell us about when that was?

3 A I can't put a date on it.

4 Q Can you put a year or a time of year on
5 it?

6 A It was sometime in 2004, probably.

7 Q Okay. And did Mr. Black take notes
8 during that visit?

9 A Yes, sir.

10 Q Okay. And would you rely on his notes or
11 your memory about what date that was you were
12 with him?

13 A I'd rely on Mr. Black.

14 Q Okay. Now, did you see him-- you were
15 there when he took a sample from the well?

16 A Yes, sir.

17 Q Did you see him take the baler from the
18 monitoring well?

19 A Yes, sir.

20 Q Was there water in the baler?

21 A Yes, sir.

22 Q Where did that water come from?

23 A Came -- came out of the test well.

24 Q Okay. And did you smell that water?

25 A I did.

Page 33

1 Q And if you would, tell the ladies and
2 gentlemen of the jury what that water smelled
3 like.

4 A Smelled like solvent I was used to.

5 Q What do you mean "solvent"?

6 A Oh, like you'd use in a body shop to thin
7 paint with, or...

8 Q Okay. Did that concern you that the
9 water there on your property smelled like solvent?

10 A Yes, sir.

11 Q Based on what you observed from that
12 water, did it appear to be something that you
13 would want to drink, yourself?

14 A No, I wouldn't want to drink it.

15 Q Do you think anybody would?

16 A No, sir.

17 Q Would you want to give that water to your
18 cattle?

19 A No, sir.

20 Q Would you want to use it for your crops?

21 A No, sir.

22 Q Why not?

23 A I'm not sure that it wouldn't have burned,
24 it wouldn't ignite.

25 Q Let's talk for a minute about the use of

Page 40

1 A Yes, sir.

2 Q Now, I want you to go back and -- in-- in
3 -- at the end of 2004, or just before it, is that
4 you-- the water came up out of that baler and you
5 found that the groundwater on your property had
6 been-- had problems.

7 Do you have an opinion as to what you
8 think the value of that land was before then?

9 A I think --

10 MR. ADAMS: Object to the form of the
11 question.

12 I'm sorry. Go ahead.

13 THE WITNESS: I think --

14 Q (BY MR. JOHNSTON) Okay. Well, let me
15 -- let me break that down, because I want to make
16 sure that we're in good shape for the judge.

17 MR. ADAMS: And, Wes, pardon me. The
18 basis of my objection was characterizing the
19 groundwater as having problems. That was really
20 the only basis for it. Thank you. Sorry to
21 interrupt.

22 Q (BY MR. JOHNSTON) Mr. Foster, when
23 did you first believe that you had problems with
24 your groundwater?

25 A When Mr. Black pulled a sample out of

Page 41

1 that well and I was there and it smelled like
2 solvent or some kind of fuel that you could pour
3 out on the ground --

4 Q Okay.

5 A -- and ignite.

6 Q Now, immediately before that you made
7 that discovery, do you have an opinion as to what
8 you thought the value of your 312 acres there
9 was?

10 A Yes, sir.

11 Q Okay.

12 MS. ROBERTSON: And let me object on
13 the grounds of-- that this witness is not qualified
14 to render that opinion with regard to the lands in
15 Section 5.

16 MR. JOHNSTON: Okay. Well, I'm sure
17 we'll have a chance to address that, and it'll be
18 addressed through many other witnesses as well.

19 Q (BY MR. JOHNSTON) But, Mr. Foster,
20 before you discovered the issue with the
21 groundwater, did you have an opinion as to what
22 you thought the value of those-- of the 312 acres
23 was?

24 A Yes, sir.

25 Q And what is that opinion?